

Richard S. Taffet
Diane C. Hertz
John P. Son
BINGHAM McCUTCHEN LLP
399 Park Avenue
New York, New York 10022
Tel: (212) 705-7000

and

Bennett D. Krasner
1233 Beech Street #49
Atlantic Beach, NY 11509
Tel: (516) 889-9353

*Attorneys for Plaintiff
L & L Wings, Inc.*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

L & L WINGS, INC.,

Plaintiff and Counterclaim Defendant,

-against-

MARCO-DESTIN INC., 1000 HIGHWAY
98 EAST CORP., PANAMA SURF &
SPORT, INC. AND E & T INC.,

Defendants and Counterclaim Plaintiffs.

Civil Action No. CV-07-4137
(BSJ) (GWG)

**DECLARATION OF
DAVE GRAZIADEI
RE: STORE #748**

Dave Graziadei declares as follows under 28 U.S.C. § 1746:

1. I am the sole proprietor of David Graziadei Investigations ("DGI") which is located in Bascom, Florida. DGI is a private investigative agency.
2. In or around April 2008, I was contacted by Michael Martinez of Advantage PI, Inc. ("Advantage") of Tampa, FL. Advantage retained me to visit and photograph the

establishment located at 1251A Miracle Strip Pkwy., Fort Walton Beach, FL 32548 ("Store 748"). I was instructed to note the usage of any "Wings" signage inside and outside the store, and to purchase a small item and obtain the bag and receipt.

3. On April 13, 2008 at 3:47 pm, I arrived at Store 748 and observed that:

- a. the main outdoor signs displayed the name "Wings";
- b. within the store, there were hang tags attached to merchandise that also displayed the name "Wings."

4. During my visit to Store 748, I purchased a postcard for \$0.27. The receipt displayed the "Wings" name. A true and correct copy of that receipt is attached as Exhibit A.

5. The shopping bag that I received with my purchase also displayed the "Wings" name. A true and correct photograph of that shopping bag is attached as Exhibit B.

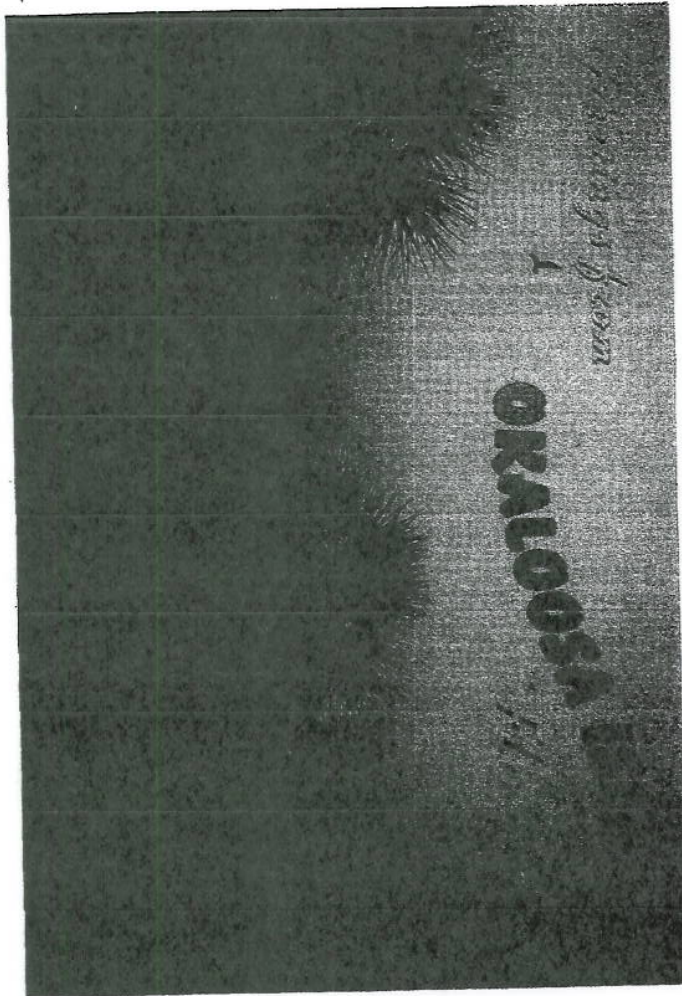
6. Attached hereto as Exhibit C is a true and correct copy of my contemporaneous report prepared at Advantage's request and upon which this Declaration is based.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 19 day of June, 2008.



DAVE GRAZIADEI

**Wings 748**

1251A Miracle Strip Pkwy

Fl. Walton Beach, FL 32548

Tel(850)244-4039 Fax(850)244-4076

Date: 4/13/2008

Receipt #: 304849

Time: 1:55:39 PM

: FT. WALTON BEACH, FL

Cashier: curlevia

WS#: 2

ITEM#	QTY	PRICE	EXT PRICE
9155	1	\$0.25	\$0.25

1 Unit(s) Subtotal: \$0.25

6.000 % Tax: \$0.02

RECEIPT TOTAL: \$0.27

Tend: \$0.27

Cash: \$0.27

Returns within 7 days

with receipt only.

Refunds within 7 days of purchase with original receipt and merchandise in original conditions.

Exchanges within 30 days of purchase with original receipt and merchandise in original conditions.

Clearance and bathing suits sales are final.

NO RETURNS OR EXCHANGES ON BEACH**ACCESSORIES**

304849

EXHIBIT A



SOUTH CAROLINA ALABAMA FLORIDA TENNESSEE

www.marfoodestiny.com

EXHIBIT B

On-Site Store Checklist

Location Address : 12514 MIRAGE STRIP PKWY, Ft. Walton Beach 748
 Date and Time of Visit : 347-355P 4/13/08 FL
 Agent Name : _____
 Agent Company Name : Dave Graziadei
 Agent Company Address & : Dave Graziadei Investigations
5013 Timberlane Rd.
 Telephone number : Bascom, FL 32423
850-209-1620

Please complete the below.

tion with the "Wings" Trade dress

1. Do The Main Outdoor Signs display the name "Wings"?

☒ Yes ☐ No

1a. If answered Yes, please take a picture of the sign and attach to the back of this document.

1b. If answered No, describe what the signs read?

2. Do any Parking Lot Signs or Parking Notice Directions display the name "Wings"?

☐ Yes ☒ No

3. Upon entering and walking around the store, did you notice any small signs that display the name "Wings"?
 Please be sure to include signs on top of clothing racks, the Store Policy Notice, Store Hours Posting, signage near the dressing room and any other forms of display in your response.

☐ Yes ☒ No

4. While walking around the store, did you notice any hang tags or product promotion stickers attached to merchandise that display the name "Wings"?

☒ Yes ☐ No

4a. If answered Yes to the above, please describe:

many - WOMENS SHORTS & SUITS - CHILDREN'S CLOTHES - MEN'S T-SHIRTS

For the questions below, base your responses on observations gathered after purchasing an item less than \$2.00 in the store. Be sure to request an itemized receipt and shopping bag.

5. What item did you purchase and how much did it cost?

POST CARD 27¢

6. Does the receipt display the name "Wings"?

☒ Yes ☐ No

7. Does the shopping bag you received or do any shopping bags located behind the register display the name "Wings"?

☒ Yes ☐ No

EXHIBIT C

748

